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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. PROSPERO ARAIZA, Defendant and Appellant.	A125719 (Alameda County Super. Ct. No. H31548)

Prospero Araiza appeals from a final judgment entered after the denial of a motion to withdraw his plea of guilty to grand theft. His court-appointed counsel has filed a brief raising no legal issues and requesting our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

PROCEEDINGS BELOW

In December 2001, appellant was charged by the Alameda County District Attorney with felony violations of commercial burglary and grand theft (Pen. Code, §§ 459, 487, subd. (a).)[1] The complaint also alleged two prior felony convictions.

On February 25, 2002, pursuant to a negotiated plea, appellant waived his right to a preliminary hearing and constitutional rights accorded him under *Boykin v. Alabama* (1969) 395 U.S. 238, 242, and *In re Tahl* (1969) 1 Cal.3d 122, 131-135, and pleaded no contest to grand theft in exchange for dismissal of the burglary charge and prior

[1] All statutory references are to the Penal Code.

conviction allegations, with an agreed upon disposition of five years' probation, conditioned on serving one year in county jail.

More than six years later, on December 9, 2008, appellant moved to vacate his plea and/or modify his conviction to a lesser charge nunc pro tunc. Among other things, the motion asserted that (1) the court failed to adequately advise appellant of immigration consequences under section 1016.5; (2) his attorney's failure to advise him of such consequences constituted ineffective assistance of counsel; and (3) the court should permit appellant to withdraw his plea on equitable grounds. Appellant's attorney also urged that his grand theft conviction be set aside and reduced to a charge that would not have adverse immigration consequences.

The motion was heard on June 1, 2009 by Alameda Superior Court Judge Dennis McLaughlin, the same judge who accepted appellant's plea six years earlier. After reviewing a transcript of the February 25, 2002 hearing at which appellant pled no contest, Judge McLaughlin determined that he had adequately advised appellant of the immigration consequences of his plea before it was made and, on that basis, denied the motion. The court also denied appellant's other claims.

FACTS

The only facts relevant to the propriety of the challenged ruling are those relating to the pre-plea information given appellant about the immigration consequences of his plea.

The transcript of the February 2002 hearing indicates that before admonishing appellant of his *Boykin/Tahl* rights, Judge McLaughlin showed appellant a two-page form he was holding labeled "Waiver on Plea of Guilty or No Contest for case 196141" and asked him whether the initials in the 15 numbered boxes along the right side of the pages of the document, and the signature at the bottom of the second page, were his. Appellant said that they were.

By initialing box number 12, appellant indicated that, as required by section 1016.5, subdivision (a), he had been advised and understood "that if I am not a citizen of the United States, this conviction may have the consequences of deportation,

exclusion from admission to the United States, or denial of naturalization." By signing the document at the bottom, appellant separately represented that he "offer[ed] my plea of 'GUILTY' or 'NO CONTEST' freely and voluntarily and of my own accord, and *with full understanding of all the matters set forth in . . . this waiver form*. I further understand that a plea of 'NO CONTEST' will have the same legal effect as a plea of guilty." (Italics added.)

Appellant's counsel, Brian Bloom, also executed an "ATTORNEY'S STATEMENT" set forth in the waiver form beneath appellant's signature. By doing so, counsel represented that "I have discussed the facts of this case with defendant, including the elements of the offense(s) charged and any possible defenses thereto and the possible consequences of a plea of guilty or no contest, *including immigration consequences if applicable*." (Italics added.) Counsel also asserted his belief that appellant waived his rights and entered his plea "knowingly, intelligently, and voluntarily."

DISCUSSION

The validity of the plea appellant entered nearly eight years ago is not here challenged. The sole issue presented is whether, as stated in the motion to vacate the plea, "good cause exists for the withdrawal of the plea" because "Mr. Araiza did not understand when advised of certain immigration consequences of his plea, thereby constituting ineffective assistance of counsel, and was prejudiced thereby, all resulting in a violation of Penal Code section 1016.5 and *People v. Soriano* (1987) 194 Cal.App.3d 1470.)" In a declaration filed in support of the motion, appellant also states that had he understood the immigration consequences of his plea he would never have entered it.

The motion additionally argues that appellant's family "will suffer tremendous emotional and financial hardship unless the plea is vacated and withdrawn."

Finally, and in the alternative, the motion requests that the court "vacate the violation of California Penal Code [section] 487(A), Grand Theft, *non pro tunc* [*sic*] to the date of March 25, 2002 [*sic*], replace the charge with a violation of Penal Code [section] 490.1, Petty Theft, and immediately accept a plea of guilty to this lesser charge from the defendant who shall be present in court."

The facts of this case bear no resemblance to those in *People v. Soriano, supra*, 194 Cal.App.3d 1470. Appellant's claim that he did not understand "certain immigration consequences of his plea" conflicts not just with the representations he made by initialing and signing the waiver form described above, but also with the statements signed by appellant's counsel who attested that appellant had been told and understood the consequences of his plea, including that of deportation. The record satisfactorily demonstrates that the plea proceedings fully conformed to the requirements set forth in subdivision (a) of section 1016.5.

The record provides no arguable basis upon which to question the validity of appellant's plea or the denial of his motion to vacate that plea.

The sentence imposed is authorized by law.

Our independent review having revealed no arguable issues that require further briefing, the judgment entered upon denial of appellant's motion to vacate his plea is affirmed.

_____
Kline, P.J.

We concur:

_____
Haerle, J.

_____
Lambden, J.

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